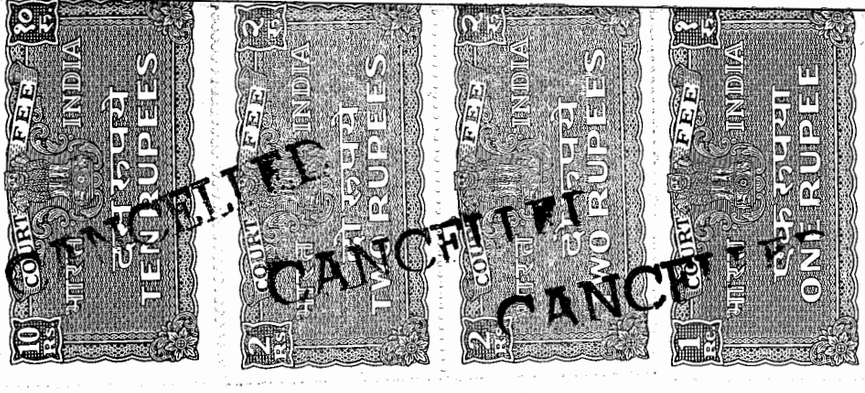

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench

MISC. APPEAL NO. 265 /2003

1) Holu Ram Nishad : **APPELLATNS APPLICANTS**
S/o. Sukalu Nishad
Aged about 32 years
Occupation-Labourer

2) Sonbati Bai
W/o. Holu Ram Nishad
Aged about 25 years
Occupation-Labourer

Both R/o.Village-Mauoo
P.O. Mauoo, P.S. Nadghat
Tehsil-Bemetara,Dist:Durg(C.G)

P. R. No. 265/03
Presented by Shri Bharat Kumar Tiwari
dated 26.03.03

VERSUS

1) Ishak Mohmmed : **RESPONDENTS**
Aged about 40 years
S/o. Baffathi Mohmmed Bhathia
Occupation Driver & Truck Owner
R/o.. Village Nadghat,
Tahsil:Navgarh, Dist:Durg(CG)

2) Laxminarayan, aged abour 25 yrs.
S/o.Rameshwar Satnami
Occupation Truck Conductor
R/o. Vill-Akoli,P.S.Nadghat
Tahsil:Navgarh, Dist:Durg(CG)

3) The Oriental Insurance Co.
Through its Manager
Bhatapara,
District : Raipur(C.G)

APPEAL UNDER SECTION 173 OF THE MOTOR VEHICLE ACT 1988 FOR AWARDING CLAIM U/S 140 OF M.V. ACT AND DIRECTING THE TRIBUNAL TO ENTERTAIN THE CLAIM CASE PREFERRED BY APPELLANT BEFORE THE TRIBUNAL

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

18-01-2005.

Shri Anand Kumar Tiwari, counsel for the appellants.

Shri Vipra Sen Agrawal, counsel for respondents No.1 and 2.

Shri Abhishek Sinha, counsel for respondent No.3/Insurance Company.

Heard counsel for the respective parties.

The appellants/Claimants, who are the father and mother of deceased Shreedeh, have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988, against the order dated 25-02-2003, passed by the learned Additional Motor Accident Claims Tribunal, Bemetara, District: Durg in Claim Case No. 23 of 2002.

The appellants/Claimants have filed an application under Section 166 of the Motor Vehicle Act, 1988 (hereinafter referred to as "the Act") before the learned Claims Tribunal claiming compensation of Rs.10,00,000/- and another application under Section 140 of the Act for no fault liability, which have been rejected by the learned Claims Tribunal.

Brief facts of the case are that on 28-03-2002 at about 3.00 p.m. a truck bearing Registration No.MPC/1909, renewed No.CG-04/ZC-2282 was parked near the house of one Hakim Baeg in a narrow lane of village Mauoo. Respondent No.1 was the driver and respondent No.2 was the conductor of the said truck. Respondent No.1 and 2 negligently, without taking due care opened the side panel of the truck for unloading the stones (Boulders). At that time deceased namely Shreedeh, aged about 5 years was passing near the truck and the boulders fell on his head, as a

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

result of which he sustained fatal injuries and became unconscious. Thereafter, he was admitted to the hospital where he succumbed to the injuries sustained by him on 29-03-2002. The matter was reported and the F.I.R. is Annexure-A/1.

The appellants filed a claim case before the learned Claims Tribunal claiming compensation of Rs.10,00,000/- along with an application under Section 140 of the Act for no fault liability on the ground that due to the negligence and carelessness of the driver and conductor of the truck the said incident occurred, which resulted in the death of their son namely Shreedeh.

The respondents raised an objection before the learned Claims Tribunal that the claim petition is not maintainable on the ground that the accident cannot be said to have occurred due to use of the vehicle in question.

After hearing learned counsel for the parties, the learned Claims Tribunal rejected the claim case of the appellants/claimants, by the impugned order, as not maintainable.

Section 165 of the Motor Vehicle Act, 1988 is relevant and quoted below :

> ***"165. Claims Tribunal.*** *- (1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereinafter in this Chapter referred to as "Claims Tribunal") for such areas as may be specified in the notification for the*

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

Explanation.- For the removal of doubts, it is hereby declared that the expression "claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles" includes claims for compensation under Section 140 [and Section 163-A].

(2) A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.

(3) A person shall not be qualified for appointment as a member of a Claims Tribunal unless he—

(a) is, or has been, a Judge of High Court, or
(b) is, or has been, a District Judge, or
(c) is qualified for appointment as a Judge of a High Court (or as a District Judge).

(4) Where two or more Claims Tribunals are constituted for any area, the State Government, may by general or special order, regulate the distribution of business among them."

Learned counsel for the appellants stated that the order passed by the learned Claims Tribunal is not sustainable and placed reliance on a decision of the Division Bench of Madhya Pradesh High Court reported in **2002 (1) JLJ – 277 Kiran Chhabra (Smt.) and another Vs. Khajji Patel and others.** In the said case the Court observed as under :

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

"9. The matter is examined in the context of available material on record of this case. There is no dispute that the accident was the result of wrong and negligent use of the tractor by the driver thereof which should not have parked it at a sloping place, then put the same on the jack and then carry on the repairs. In a situation like this, the slipping of the jack could be expected and this happened as a result of which the disc of the tractor hit the chest of the deceased who was supervising the repair work. As a result of this accident, he suffered serious injuries and despite treatment, died in the District Hospital, Damoh."

Learned counsel for the appellants also relied on the decisions of Hon'ble Supreme Court rendered in the cases of ***Shivaji Dayanu Patil and another vs. Smt. Vatschala Uttam More*** reported in ***AIR 1991 SC 1769*** {Paras 25, 26, 35 and 36}, ***Rita Devi (Smt.) and others vs. New India Assurance Co. Ltd. and another*** reported in ***(2000) 5 SCC 113*** {Para 9}, ***Union of India vs. United India Insurance Co. Ltd. and others*** reported in ***AIR 1998 SC 640*** {Paras 40, 41, 42, 43 and 44}.

In the case of ***Shivaji Dayanu Patil and another (Supra)*** the Hon'ble Supreme Court has observed as under :

"25. These decisions indicate that the word "use", in the context of motor vehicles, has been construed in a wider sense to include the period when the vehicle is not moving and is stationary, being either parked on the road and when it is not in a position to move due to some breakdown or mechanical defect. Relying on the above mentioned decisions, the Appellate Bench of the High Court has held that the expression "use of a

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

motor vehicle" in S. 92-A covers accidents which occur both when the vehicle is in motion and when it is stationary. With reference to the facts of the present case the learned Judges have observed that the tanker in question while proceeding along National Highway No.4 (i.e. while in use) after colliding with a motor lorry was lying on the side and that it cannot be claimed that after the collision the use of the tanker had ceased only because it was disabled. We are in agreement with the said approach of the High Court. In our opinion, the word "use" has a wider connotation to cover the period when the vehicle is not moving and is stationary and the use of a vehicle does not cease on account of the vehicle having been rendered immobile on account of a break-down or mechanical defect or accident. In the circumstances, it cannot be said that the petrol tanker was not in the use at the time when it was lying on its side after the collision with the truck.

***26.** The only other question which remains to be considered is whether the explosion and fire which caused injuries to the deceased son of the respondent can be said to have taken place due to an accident arising out of the use of a motor vehicle viz. the petrol tanker. Shri Sanghi has urged that the expression 'arising out of the use of a motor vehicle' implies a causal relationship between the user of the motor vehicle and the accident which has resulted in death or disablement and that in the present case it cannot be said that the explosion and fire which took place in the petrol tanker four and half hours after the collision and after the tanker had turned turtle was an accident arising out of the use of the petrol tanker. In this regard, Shri Sanghi has emphasized that the persons who sustained injuries as a result of the explosion and a fire in the petrol tanker were pilfering petrol which had leaked out from the petrol tanker and the explosion and fire was the result of the said unlawful*

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

activity of those persons and that it was not on account of the user of the petrol tanker. Shri Sanghi, in this connection, has placed reliance on the decision in Mackinnon Machkenzie and Company Pvt. Ltd. vs. Ibrahim Mahommed Issak (1970) 1 SCR 869 " (AIR 1970 SC 1906), wherein this Court has construed the expression 'arising out of employment' appearing in Section 3 of the Workmen's Compensation Act, 1923 and as laid down that there must be a casual relationship between the accident and the employment. Shri Sanghi has urged that similarly there must be a casual relationship between the accident and the user of the motor vehicle for the purpose of maintainability of a claim under Section 92-A of the Act.

***35.** This would show that as compared to the expression "cause by", the expression "arising out of" has a wider connotation. The expression "caused by" was used in Sections 95(1)(b)(i) and (ii) and 96(2)(b)(ii) of the Act. In Section 92-A, Parliament, however, choose to use the expression "arising out of" which indicates that for the purpose of awarding compensation under Section 92-A, the casual relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement is not required to be direct and proximate and it can be less immediate. This would imply that accident should be connected with the use of the motor vehicle but the said connection need not be direct and immediate. This construction of the expression "arising out of the use of a motor vehicle" in Section 92-A enlarge the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment.*

***36.** Was the accident involving explosion and fire in the petrol tanker connected with the use of tanker as a*

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

motor vehicle ? In our view, in the facts and circumstances of the present case, this question must be answered in the affirmative. The High Court has found that the tanker in question was carrying petrol which is a highly combustible and volatile material and after the collision with the other motor vehicle the tanker had fallen on one of its sides on sloping ground resulting in escape of highly inflammable petrol and that there was grave risk of explosion and fire from the petrol coming out of the tanker. In the light of the aforesaid circumstances, the learned Judges of the High Court have rightly concluded that the collision between the tanker and the other vehicle which had occurred earlier and the escape of petrol from the tanker which ultimately resulted in the explosion and fire were not unconnected but related events and merely because there was interval of four to four and half hours between the said collision and the explosion and fire in the tanker, it cannot be necessarily inferred that there was not casual relation between explosion and fire. In the circumstances, it must be held that the explosion and fire resulting in the injuries which led to the death of Deepak Uttam More was due to an accident arising out of the use of the motor vehicle viz. the petrol tanker No.MKL-7461."

In the case of ***Rita Devi (Smt.) and Others (Supra)*** the Hon'ble Supreme Court has observed as under :

9. A conjoint reading of the above two sub sections of Section 163-A shows that a victim or his heirs are entitled to claim from the owner/Insurance Company a compensation for death or permanent disablement suffered due to accident arising out of the use of the motor vehicle (emphasis supplied), without having to prove wrongful act or neglect or default of anyone. Thus it is clear, if it is established by the claimants that the death or disablement was caused due to an

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -8-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

accident arising out of the use of motor vehicle then they will be entitled for payment of compensation. In the present case, the contention of the Insurance Company which was accepted by the High Court is that the death of the deceased (Dashrath Singh) was not caused by an accident arising out of the use of motor vehicle. Therefore, we will have to examine the actual legal import of the words "death due to accident arising out of the use of motor vehicle".

The decision rendered in the case of **Shivaji Dayanu Patil and another (Supra)** came up for consideration in the aforesaid case also.

In the case of **Union of India (Supra)** the Hon'ble Supreme Court has also observed as under :

"40. In our view the Tribunal is clearly an alternative forum in substitution for the Civil Court for adjudicating upon claims for compensation arising out of the "use of motor vehicles". This is further made clear from Section 110-F of the Act which states that no Civil Court shall entertain any question "relating to any claims for compensation which may be adjudicated upon by the Claims Tribunal". In our view, when we are concerned only with Section 110(1) and when Section 110B does not and cannot control Section 110(1), a claim is entertainable by the Tribunal, if it arises out of the use of a motor vehicle and if it is claimed against persons or agencies other than the driver, owner or insurer of the vehicle provided in tort, such other persons or agencies are also claimed to be liable as joint tort-feasors. It is obvious that prior to that constitution of the Tribunal, such compensation could be decreed by the Civil Court not only against the owner/driver and insurer of the motor vehicle but also against others who were found to be joint tort-feasors. The words "use of the motor vehicle" are also be construed in a wide manner. The

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -9-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

above words were interpreted by this Court in Shivaji Dayanu Patil vs. Vatschala Uttam More, (1991) 3 SCC 530: (AIR 1991 SC 1769) in the context of Section 92-A. This Court in that connection referred to the Australian case in Government Insurance office of N.S.W. vs. R.J. Green and Lioyds Pvt. Ltd. (1965) 114 CLR 437 and to the observations of Barwick, C.J. that those words have to be widely construed. We may also refer to the observations of Windeyer, J. in same case to the following effect.—

".....no sound reason was given for restricting the phrase, "the use of a motor vehicle" in this way. The only limitation upon its..... that I can see is that the injury must be one in sany way a consequence of a use of the vehicles as a motor vehicles".

***41.** Further, Section 110-E of the Act provides for recovery of the compensation "from any person" as arrears of land revenue and recovery under that Section is not restricted to the owner/driver or insurer specified in the second part of Section 110-B. Obviously the words from any persons are referable to persons other than driver/owner or insurer of the motor vehicle.*

***42.** For all the above reasons, we hold that the claim for compensation is maintainable before the Tribunal against other persons or agencies which are held to be guilty of composite negligence or are joint tort-feasors, and if arising out of use of the motor vehicle. We hold that the Tribunal and the High Court were right in holding that an award could be passed against the Railways if its negligence in relation to the same accident was also proved. We find that there has been a conflict of judicial opinion among the High Court's on the above aspect. The Andhra Pradesh High Court in Oriental Fire & General Insurance Co. Ltd. vs. Union of India, 1975 Acc CJ 33 : AIR 1975 Andh Pra 222 took the view that the claims before the Tribunal are*

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 10	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

restricted to those against the driver, owner and insurer of the motor vehicles and not against the Railways. But on facts the decision is correct inasmuch as though it was an accident between a lorry and a train at a Railway crossing, it was a case where the driver, cleaner etc., travelling in the lorry were injured and there was no claim against the lorry owner. The suit was filed in 1967 in the Civil Court and was decreed against the Railway. A plea raised in the High Court that the Civil Court had no jurisdiction and only the Tribunal had jurisdiction was negatived. In our view, on facts the decision is correct because the plea was one of the exclusive negligence of the Railway. In Union of India vs. Bhimeswara Reddy, 1988 Acc CJ 660 : (AIR 1989 Andh Pra 49), though the driver and owner were parties, the ultimate finding was that the driver of the motor vehicle was not negligent and the sole negligence was that of the Railway. The case then at that stage comes out of Section 110(1). Here also the conclusion on facts, in our view, is correct. But certain general broad observations made in these two cases that in no circumstances a claim can be tried by the Tribunal against the persons/agencies not referred to in the second part of Section 110-B, are not correct. Similarly the Gauhati High Court in Swarnalata Dutta vs. National Transport India (Pvt.) Ltd., AIR 1974 Gauhati 31, by the Orissa High Court in Orissa R.T.C. Ltd. vs. Umakanta Singh, AIR 1987 Orissa 110 and the Madras High Court in Union of India vs. Kailasan, 1974 Acc CJ 488 (Mad) have held that no award can be passed against others except the owner/driver or insurer of the motor vehicle. On the other hand the Allahabad High Court in Union of India vs. Bhagwati Prasad, AIR 1982 All 310, the majority in the Full Bench of the Punjab & Haryana High Court in Rajpal Singh vs. Union of India, 1986 Acc CJ 344: (AIR 1986 Punj & Har 239), the Gujarat High Court in Gujarat SRTC vs. Union of India, AIR 1988 Gujarat 13, the Kerala High Court in the judgment under Appeal and in United India

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -11-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Insurance Co. vs. Premakumaran, 1988 Acc CJ 597 and the Rajasthan High Court in Union of India vs. Dr. Sewak Ram, 1993 Acc 366 have taken the view that a claim lies before the Tribunal even against another joint tort-feasor connected with the same accident or against whom composite negligence is alleged.

43. We are of the opinion that the view taken by the Andhra Pradesh, by way of obiter and the views of the Gauhati, Orissa and Madras High Courts is not correct and that the view taken by the Allahabad. Punjab and Hariyana, Gujarat, Kerala and Rajasthan High Courts is the correct view. Further, as pointed by the Gujarat High Court, claims where it is alleged that the driver/owner of the motor vehicle is solely responsible for the accident, claims on the basis of the composite negligence of the driver of the motor vehicle as well as driver or owner of any other vehicle or of any other outside agency would be maintainable before the Tribunal but in the latter type of case, if it is ultimately found that there is no negligence on the part of the driver of the vehicle or there is no defect in the vehicle but the accident is only due to the sole negligence of the other parties/agencies, then on that finding, the claim would go out of Section 110 (1) of the Act because the case would then become one of exclusive negligence of railways. Again if the accident had arisen only on account of the negligence of persons other than the driver/owner of the motor vehicle, the claim would not be maintainable before the Tribunal.

44. We may however add that if as of today, any claims against persons other than the driver/owner/insurer are pending in Civil Courts, but which as per the law hereinabove stated ought to have been lodged before the Tribunal, then the Civil Courts concerned shall return the plaints and the claimants could present the same as a petition before the Tribunals. In that event, they shall be dealt with as if they are claim petitions

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

presented before the Tribunals on the date on which plaints were filed in the Civil Courts and shall be disposed of under the provisions of the Motor Vehicles Act and in accordance with law."

Learned counsel for the respondents relied on the decision of Orissa High Court in the case of ***Kanhei Rana and another vs. Gangadhar Swain and others*** reported in ***AIR 1993 Orissa 1989***. Para 7 of the said judgment is relevant and quoted below :

> ***7. If it is held that the death occurred in the manner as concluded by the Tribunal, it has to be seen whether there was any use of the motor vehicle which had been a casual relationship with the accident which has resulted in the death. There can be no hard and fast rule as to in which case the "use" can be inferred. The learned counsel for appellants submits that even if it is accepted that the death was due to fall of a log, since the same was being loaded to a truck it has nexus with the user of the vehicle. Though the submission is attractive, yet it is not sound. As indicated above, it is impossible to lay out any fixed and rigid guideline. To illustrate, supposing while the truck is being loaded with logs, suddenly the vehicle is started without any caution, and a log falls on a person, certainly it can be held that the accident had nexus with the use of the vehicle. Merely because the vehicle was intended to be used as means of transportation, that would not be decisive. A person does not "use" a motor vehicle unless there is at the relevant time some electment of control, management or operation of the vehicle (See Brown v. Roberts (1965) 1 QB1). The first meaning assigned to the use in Johnson's dictionary is to employ to any purpose. It is, therefore, a word of wide significance. The facts as detailed by the Tribunal show that the fall of the log had no nexus with the user of the vehicle not even remotely. There is no material to show that the fall of the log was occasioned due to***

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मामला क्रमांक M.A.No. 265/2003 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -13-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

use of the vehicle. A careless handling of goods being loaded on or unloaded from a vehicle has no connection to the vehicle itself. Whether there were any lapses in the process of loading/unloading is not very material here. Therefore, the Tribunal was justified in its conclusion that the insurer has no liability."

The facts of the aforesaid case are entirely different to the facts of the present case. The negligence is attributed to Respondent No.1- Driver and Respondent No.2- Conductor and it is alleged that the Driver and Conductor are responsible.

Here in the instant case, the learned Claims Tribunal has not at all considered the material available on record and dismissed the claims case at the threshold. The case of the claimants as stated is that respondent No.1 and 2 negligently, without taking due care opened the side panel of the truck for unloading the stones (Boulders). The learned Claims Tribunal has not afforded any opportunity to the claimants to lead evidence. In view of the material available on record, prima facie the order of the learned Claims Tribunal dismissing the claim case filed by the appellants/claimants is not justified.

Having heard and learned counsel for the parties and the material available on record, in the opinion of this Court, the Order dated 25-02-2003, passed by the learned Additional Motor Accident Claims Tribunal, Bemetara, District: Durg in Claim Case No. 23 of 2002 is not sustainable and deserves to be set aside. Accordingly, the appeal is allowed and the order dated 25-02-2003, passed by the learned Additional Motor Accident

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	Claims Tribunal, Bemetara, District: Durg in Claim Case No. 23 of 2002 is set aside. The case is remanded back to the learned Additional Motor Accident Claims Tribunal, Bemetara, District: Durg with a direction to consider and decide the case on its own merits in accordance with law. The parties are directed to appear before the learned Claims Tribunal on 14-03-2005. The learned Claims Tribunal is also directed to dispose of the application under Section 140 of the Motor Vehicle Act within a period of 30 days from the date of appearance of the parties. Certified copy as per rules. Sd/- Ag. Chief Justice.	